

PLANNING & DEVELOPMENT SERVICES DEPARTMENT REPORT

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DATE: December 12, 2002

TO: Orange County Zoning Administrator

FROM: Planning and Development Services Department/Current Planning Services Division

SUBJECT: Public Hearing on Planning Application PA02 0122 for Use Permit and Variance

PROPOSAL: The applicant requests approval of a Use Permit to allow the construction of a 12'-6" high (maximum) retaining wall located 6 to 15 feet back from the rear property line when the standard height for a retaining wall in that location is 6 feet. A 36-inch high glass barrier will be installed on top of the retaining wall. The retaining wall is in conjunction with the construction of a proposed swimming pool/spa, terrace and other improvements to the dwelling. A Variance is requested to allow a second level deck to project within 17 feet from the rear property line was a setback of 20 feet is required.

LOCATION: The project is located in the community of Emerald Bay, inland of Pacific Coast Highway, at 1103 Emerald Bay, Laguna Beach. Fifth Supervisorial District.

APPLICANT: Jon and Karen Jaffe, property owner

STAFF William V. Melton, Project Manager

CONTACT: Phone: (714) 834-2541 FAX: (714) 667-8344

SYNOPSIS: Current Planning Services Division recommends Zoning Administrator approval of PA02-0122 for Use Permit and a portion of the Variance request subject to the attached Findings and Conditions of Approval.

BACKGROUND:

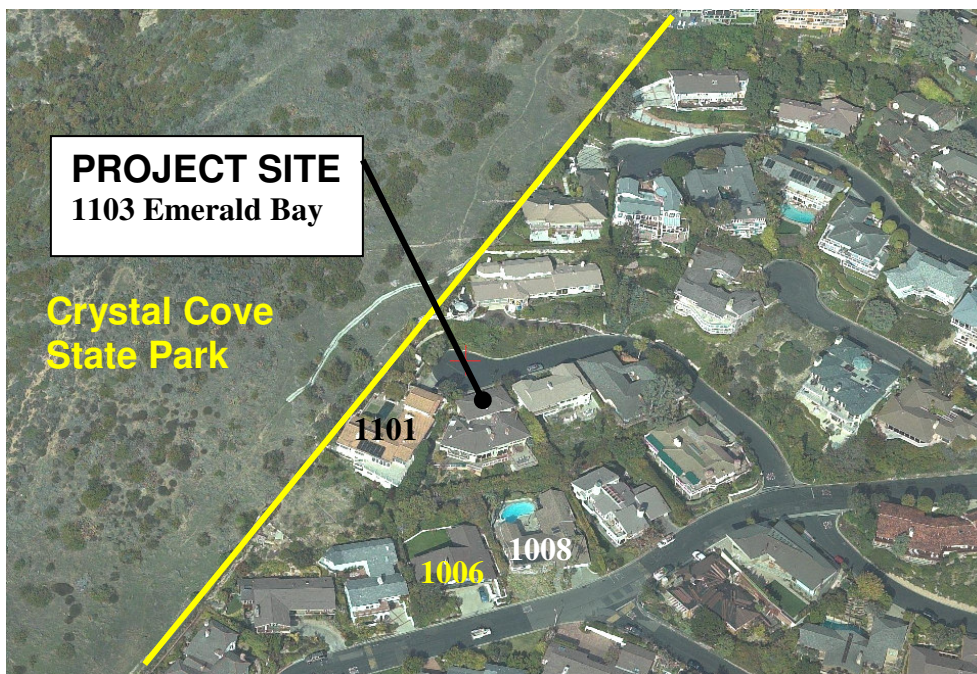
The subject site is approximately 9,850 square feet in size, is a pie shaped and located on at the turn around area of a cul-de-sac street. The property is developed with a single-family dwelling. The existing dwelling is located 25 feet from the rear property line. The property at the rear of the structure drops 20 to 25 feet in elevation to the rear property line, which is a slope of approximately 1 to 1.

The applicant proposes to make significant additions to the existing dwelling. Part of the remodeling effort includes the addition of a pool/spa, additional ground level terrace space and a mid-level cantilevered deck at the rear of the property. In order to construct the new terrace space and pool, a retaining wall, with caisson supports, to a maximum height of 12'-6" above finished grade is proposed. The proposed wall is setback as close as 6 feet from the rear property line at the pool area; and, as close as 9 feet from the rear property line at the terrace area. Since the proposed wall is located in the rear setback area and exceeds a height of 6 feet, Zoning Code Section 7-9-137.5 "Fences and walls" requires approval of a Use Permit for such proposed modification.

Included with this Planning Application is a rear setback variance to allow support posts for a second level deck to be located in the rear 25 feet setback area and the deck surface to cantilever, or project, past the permitted 5 feet encroachment area of the rear setback. The deck supports area located approximately 23 feet from the rear property line. The Zoning Code requirement for this lot is a rear setback of 25 feet for any deck supports. The proposed deck is unroofed and uncovered and is permitted by Zoning Code Section 7-9-128.6 to project 5 feet (or 20 feet from the rear property line) into the rear setback area. The plans submitted indicated that a small portion of the deck projects 8 feet into the rear setback area, or 17 feet from the rear property line. A variance is required to be approved to permit the deck as proposed.

SURROUNDING LAND USE:

The subject property and all immediate surrounding properties are zoned R1 (CD) District. The site and all surrounding properties are developed with single-family dwellings. The boundary line for Emerald Bay is west of the site and is also the boundary line of Crystal Cove State Park, see air photo below. The community of Emerald Bay also has a certified Local Coastal Program. Properties located inland of Pacific Coast Highway, as is this site, are not subject to the CD regulation. All properties located on the ocean side of Pacific Coast Highway are also subject to regulations contained in Zoning Code Section 7-9-118, CD “Coastal Development” District.



REFERRAL FOR COMMENT AND PUBLIC NOTICE:

A Notice of Hearing was mailed to all owners of record within 300 feet of the subject site. Additionally, a notice was posted at the site, at the 300 N. Flower Building and as required by established public hearing posting procedures. A copy of the planning application and a copy of the proposed site plan were

distributed for review and comment to three County Divisions and the Emerald Bay Community Association. As of the writing of this staff report, no comments raising issues with the project have been received from other County divisions. The Emerald Bay Community Association approved the proposal on July 2, 2002 (See Exhibit 3). Staff did meet with one of the property owners (Dr. Robert Hood, 1106 Emerald Bay, see photo on page 2) to the rear of the subject site. He expressed concerns regarding the visual impacts of the proposed wall on this property and a neighboring property at 1008 Emerald Bay. He also expressed concerns about the stability of the pool during an earthquake and privacy issues. He followed up the meeting with a letter dated December 3, 2002 (Exhibit 2). Additional discussion on this meeting and his letter is presented later in this report.

CEQA COMPLIANCE:

The proposed project is Categorically Exempt (Class 3, construction of limited numbers of new small structures or facilities and Class 5, minor alterations in land use limitations such as setback variance) from the requirements of CEQA. Appendix A contains the required CEQA Finding.

DISCUSSION/ANALYSIS:

The proposed retaining wall will be a large structure in the rear yard. The proposed retaining wall is shown with a maximum height of 12'-6" above finished grade near the centerline of the rear yard. On top of the wall is a 36" high glass railing, bringing the total structure height to 15'-6". The wall height varies from 10'-5" above grade at the west side of the property to 9'-3" above grade on the east side of the property. The wall setback from the rear property lines varies for 6' from the east side to 15' from the west side. The proposed wall's length facing the rear property is 105 feet, which is 77 percent of the lot's width at that point.

As previously mentioned, an adjacent homeowner has provided a letter (Exhibit 2) expressing a concern for this proposal. Dr. Hood is one of two property owners sharing a rear property line with the subject site. His major concern is the height of the wall. The terrace level created by the retaining wall will be at an elevation of 276', which is the same elevation of an existing terrace. The elevation of Mr. Hood's rear lawn area is 247', a difference of 28'. The proposed wall is located approximately 38 feet from the back of Dr. Hood's house and approximately 30 feet from his back yard lawn area. The area between is covered in a dense mixture of trees and scrubs.

As an alternate to the single retaining wall, the same terrace level height proposed could be obtained through the use of a series of 6' feet high retaining walls in a terracing fashion. Starting at the rear property line, the applicant could construct a 6' high above grade retaining wall without the need for a Use Permit. Provided there is a separation between walls and a building permit is issued for each separate wall, a second, third or more walls could be then constructed, again without the need for a Use Permit, until the desired final elevation is achieved. This alternate method would require substantial amounts of additional grading, landscape removal and much more construction time. Considering that both the proposed one wall method and the alternated multi-wall method would achieve the same goal, a series of 6' feet high retaining walls with the first wall possibly starting at the property line may have the same visual effect on Mr. Hood's property. Both methods provide an opportunity to use landscaping to help

buffer the visual impacts of the wall. The Emerald Bay Community Association has approved a preliminary landscaping plan. A Condition of Approval requires the applicant to submit to Current Planning a final Emerald Bay Community Association approved landscaping plan prior to the issuance of a grading permit. Before the Zoning Administrator can approve the Use Permit for wall modifications, Zoning Code Section 7-9-137.5(f) requires the following two findings be made:

1. That the height and location of the fence or wall as proposed will not result in or create a traffic hazard.
2. That the location, size, design and other characteristics of the fence or wall will not create conditions or situations that may be objectionable, detrimental or incompatible with other permitted uses in the vicinity.

Regarding the variance request to allow the second level deck to have supports in the rear setback area and to project further than 5 feet from the rear setback line, staff can support the variance to allow the supports but cannot support the additional projection as requested for reasons of privacy on the properties to the rear. The deck supports encroach one to two feet into the required 25 feet setback area and does not affect any issues raised by Dr. Hood. Because the majority of the second level deck is within the permitted projection area and because the area of projection outside the permitted area is only a small triangular area, the use of the second level deck will not be substantially affected by denying the requested variance. Staff has included a Condition of Approval that requires the applicant to submit revised plans showing that the deck conforms to County standards.

1. There are special circumstances applicable to the subject building site which, when applicable zoning regulations are strictly applied, deprive the subject building site of privileges enjoyed by other property in the vicinity and subject to the same zoning regulations.
2. Approval of the application will not constitute a grant of special privileges, which are inconsistent with the limitations placed upon other properties in the vicinity and subject to the same zoning regulations when the specified conditions are complied with.

Staff is of opinion that the Zoning Administrator is able to make these two wall modification findings and the two variance findings for the deck support post encroachment. The findings for wall modification and special circumstances for approving the variance requested for this proposal are in Appendix A, Findings 9 through 12.

RECOMMENDED ACTION:

Current Planning Services Division recommends the Zoning Administrator:

- a. Receive staff report and public testimony as appropriate; and,
- b. Approve that portion of Planning Application PA02-0122 for Use Permit for over height walls subject to the attached Findings and Conditions of Approval; and

- c. Approve that portion of Planning Application PA02-0122 for Variance for the deck support posts in the rear setback area subject to the attached Findings and Conditions of Approval; and
- d. Deny that portion of Planning Application PA02-0122 for Variance for the projection of the second level deck into the rear setback area beyond the five (5) feet limit.

Respectfully submitted

Chad G. Brown, Chief
CPSD/Site Planning Section

WVM

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APPENDICES:

- A. Recommended Findings
- B. Recommended Conditions of Approval

EXHIBITS:

- 1. Applicant's Letter of Explanation
- 2. Letter from Dr. Robert Hood dated December 3, 2002
- 3. Emerald Bay Community Association approval
- 4. Site photos and air photos
- 5. Site Plans

APPEAL PROCEDURE:

Any interested person may appeal the decision of the Zoning Administrator on this permit to the Orange County Planning Commission within 15 calendar days of the decision upon submittal of required documents and a filing fee of \$245.00 filed at the Development Processing Center, 300 N. Flower St., Santa Ana. If you challenge the action taken on this proposal in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this report, or in written correspondence delivered to the Planning and Development Services Dept.